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## Ex-Server Says Miami Seafood Restaurant Steals Tips

By **Caleb Drickey**

Law360 (March 20, 2023, 6:39 PM EDT) -- A Miami seafood restaurant steals its waitstaff's tips and requires them to perform excess untipped work without adequate compensation, a worker alleged in a proposed class and collective action filed Monday in Florida federal court.

In his **complaint**, ex-Crab Du Jour server Jonathan Conde accused the seafood establishment of violating federal and Florida state rules concerning tip credits. According to the worker, the restaurant failed to inform workers that they would earn less than the federal minimum rate, failed to allow tipped workers to spend the vast majority of their work engaged in tipped tasks, and did not permit workers to keep all gratuities they received from customers.

"As a direct and proximate result of defendant's deliberate underpayment of wages, plaintiff has been damaged in the loss of federal minimum wages for one or more weeks of work during their employment with defendant," Conde said.

Conde, who was employed as a server between April 2022 and January 2023, says the restaurant claimed a credit of \$3.02 per hour he worked against his wages.

Under the Fair Labor Standards Act and the Florida Minimum Wage Act, such pay policies are not necessarily illegal. So long as employers notify workers of their intentions to take tip credits, permit them to spend at least 80% of their days engaged in customer-facing tipped work, and forgo claiming any percentage of worker tips, the FLSA permits employers to pay tipped workers as little as \$2.13 per hour.

In Florida, the tipped minimum wage sits at \$7.98 per hour, as of January 2023.

However, Conde says that Crab Du Jour never informed him or his colleagues that they would receive subminimum wages. Nor were they permitted to spend at least 80% of their shifts receiving tips; he says instead that workers were required to clean the restaurant and prepare tables for at least two hours per day at the start and end of their shifts.

He also claims that the restaurant, which is officially incorporated as CDJ of 152nd St Miami LLC, and its managers misappropriated their tips. Although customer gratuities are considered the property of tipped workers under state and federal law, Conde said that Crab Du Jour both required workers to turn over a portion of their tips to managers and other staff and subtracted the cost of so-called dine-and-dashers from their accrued tips.

"The total expenses incurred by plaintiff and all other similarly situated servers for the benefit of defendant as a result of having to pay out of their own pockets for costs associated with walk-outs, breakages, and/or cash register shortages caused their weekly wages to fall below the minimum wage standard," the server said.

Because those policies allegedly applied equally to more than 50 other servers in the past five years, Conde requested the creation and certification of four separate FLSA collectives denied minimum wages for all hours worked dating back three years. He also requested the certification of five classes of workers seeking unpaid wages under state law dating back five years.

Jordan Richards, counsel for Conde, said in a statement Monday that his client's experiences were part of an industrywide pattern of abusive wage practices.

"Restaurant workers commonly fall victim to unlawful wage practices at both the state and federal level," Richards said.

Representatives for Crab Du Jour did not immediately respond to a request for comment Monday.

Conde is represented by Jordan Richards of Jordan L. Richards PLLC and Andrew Obeidy of Obeidy & Associates PA.

Counsel information for Crab Du Jour was not immediately available.

The case is Conde v. CDJ of 152nd St Miami LLC, case number 1:23-cv-21065, in the U.S. District Court for the Southern District of Florida.

--Editing by Bruce Goldman.

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